



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AM/HMF/2022/0099**

HMCTS Code : **In- person hearing**

Property **16B Lampard Grove, London N16 6 UZ**

Applicant : **Euroshield Enterprise Limited**

Represented by **Mr Isaac Leibowitz**

Respondent : **Ms Lily Lai**
Represented by **The Respondent did not attend and was not represented**

Type of Application : **Application for Rent Repayment Orders by tenants under Section 41 of the Housing and Planning Act 2016**

Tribunal Members : **Judge Daley**
Mr Stephen Mason BSc FRICS – Professional Member

Date of Hearing : **29 November 2024**

Date of Decision : **14 January 2025**

DECISION

Decision

- I. The Tribunal is satisfied on the evidence before it that the Premises were unlicensed in accordance with the selective licensing scheme, during the period 22 September 2021 to 15 March 2022.
- II. Accordingly, the Tribunal finds that an offence of failing to license the premises has been committed to the required standard of proof beyond reasonable doubt.
- III. The Tribunal is satisfied that grounds exist to make a rent repayment order against the Respondent.
- IV. The Tribunal makes an order in the sum of £2,130.40(40% of the payable rent). No deduction has been made for utility bills as the Applicant by the terms of the tenancy agreement was required to pay the bills separately.
- V. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £220.00.

Introduction

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to The Housing Act 2004 which introduced the selective licensing of Housing pursuant to Section 80 of the Housing Act 2004.
2. The application stated that the rented property was situated within a selective licensing area as designated by the London Borough of Hackney. The selective licensing scheme came into force on the 10th of May 2018 and ceased to have effect on the 30 September 2023, however at the time that the offence was committed this was the relevant scheme.
3. The application stated that the selective licensing scheme affected three wards, Brownswood, Cazenove, and Stoke Newington. The premise met the criteria to be licensed as it was within the Cazenove ward, and there was no relevant exemption.
4. The application set out that the total amount of rent the Applicant was seeking to recover was the sum of £5,326.00 for the above period.
5. The Directions in this case, give detailed background information as does the tribunal decision LON/00AM/HMF/2022/0287. In brief the Applicant has a long-standing history with the property having rented it since 2010 and having purchased it in March 2023. This is the second claim brought by the applicant's company secretary the first LON/00AM/HMF/2022/0287, was brought in his personal capacity, and this application is brought by him as company secretary. There is no cross over periods in that this application concerns a period when a new tenancy was granted to the Applicant company from 22 September 2021 until 15 March 2022, when the Respondent sold the premises to the Applicant company.

6. The case of LON/00AM/HMF/2022/0287, was determined on 30 June 2023. For reasons which would appear to be purely administrative, Directions were first given in this case on 2 July 2024.
7. On 23 October 2024 the Tribunal made an order pursuant to Rule 9(3) and 9(7) and (8) of the Tribunal (Procedure) (First-tier Tribunal) Property Chamber) 2013, on the grounds that the Respondent had not complied with the directions. The respondent was invited to make written representations by 6 November 2024, thereafter the Tribunal indicated that it would re-consider representations on or after 13 November 2024. No written representations were received, and the Respondent was barred pursuant to the order.
8. In the application, the Tribunal was provided with the following information, that the Premises that is subject to this application is a one-bedroom flat, in a converted house.
9. The Tribunal noted that the Applicant did not make any complaint about the condition of the property prior to the hearing. Accordingly, the Tribunal made the finding that the condition of the property was fair.

The Hearing

10. The hearing of this matter was held at the Property Tribunal at 10 Alfred Place London, Mr Leibowitz attended on behalf of the Applicant, as set out above there was no attendance by the Respondent and in accordance with the direction barring the Respondent they did not seek and were not entitled to make representations.
11. At the hearing the Tribunal identified the following issues that it needed to satisfy itself of-:
 - Whether there was anything within the scheme of the act which prevented a company making an application;
 - The scope the claim LON/00AM/HMF/2022/0287,
 - Whether the Applicant paid the Respondent rent throughout the applicable period
 - Whether the property required a licence and if so whether it was licensed.
 - Whether an order for a rent repayment should be made? And if so the level of the repayment order.

12. Relevant Law

The relevant legal provisions are partly set out in the Appendix to this decision. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. These include an offence under section 95(1) of the 2004 Act. Such an offence is committed if a person has control or management of a house which is required to be

licensed under the selective licensing provisions of Part 3 of the Housing Act 2004 but which is not so licensed. Part 3 of the Housing Act 2004 allows local housing authorities to designate areas as being subject to selective licensing requirements. Section 95(3)(b) provides a statutory defence to proceedings for an offence under section 95(1). This defence applies where an application for a licence has been duly made and is still effective.

An offence under section 95(1) can only be committed by a person who has control of or manages a house. The meaning of these terms is set out in section 263 of the 2004 Act.

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 5 refers to Control or management of an unlicensed HMO. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether the landlord has been convicted).

Section 44 of the 2016 Act sets out the amount of order:

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

The Tribunal in reaching its decision should apply the case law which is applicable, although the Tribunal has not specifically set this out.

The Applicants' Submissions

13. The Tribunal heard from the Applicant who provided a witness statement dated 29 July 2024. He also told the Tribunal at the hearing that he had a long-standing relationship with the property in that he had either occupied the property himself or members of his family or sub-tenants (as was permissible under the terms of the lease had been in occupation).
14. He told the Tribunal that he had become aware of the need to license the property as a result of a letter sent by the London Borough of Hackney on 2 February 2022. That on making further enquiries of the local authority he had become aware that the responsibility for licensing the property was the respondents. He told the Tribunal that there had been a new tenancy agreement signed on 22 September 2021 (“the relevant agreement”), and that prior to that his landlord had been Mr

Woo, who appeared to be acting as managing agent on behalf of Ms Lai. However, the relevant agreement had been between Ms Lai and Euroshield Enterprises.

15. He told the Tribunal that he had been concerned as he became aware that the property was unlicensed in his statement, he set out that he raised this with Mr Woo, who was not interested in licensing the property. In paragraph 9 of his statement, he set out that he was worried by the response and felt insecure to live there or to let it out as he might be risking a criminal record and that he sought a resolution to the matter. He made two applications for rent repayment orders for periods of 6 months to reflect the different entities to the tenancy for the premises. The first application concerning Mr Woo was determined. This Tribunal was charged with determining the application in respect of the periods September 2021 to March 2022. The Tribunal considered the decision in LON/00AM/HMF/2022/0287, although it was not bound by the findings.
16. Mr Leibowitz told the Tribunal that he was concerned as there had been no gas safety certificate issued during that period, neither had there been any electrical inspection. He told the Tribunal that although repairs were carried out, this was often as a result of prompting on his behalf, although at one point he said Mr Woo was a good managing agent.
17. The Tribunal noted that there was no evidence of complaints or of poor condition of the property. It referred to the previous decision, in which no complaint had been made concerning the condition of the premises.
18. The Tribunal has not set out the evidence, which was given verbatim and as such as summarised the main points which were relevant to its decision. It did however consider all the evidence submitted both oral and in writing even if it has not all been set out.

Tribunal Decision

19. The Tribunal then applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004.
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
 - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
 - (iv) And if so the amount of any order.
20. The Tribunal considered the evidence before it which included a letter from the London Borough of Hackney dated 2 February 2022, in which the local authority set out that the property was within an area which required a selective licence. It also took notice of the admission made by Mr Woo in the claim before the Tribunal that

the property was not licenced, and the respondent was aware of the need to licence the property but was in the process of negotiating a sale with the Applicant company.

21. The Tribunal also carefully considered the legislation and the licensing provisions and noted that there was nothing within the provisions which appeared to prevent a company from applying for a rent repayment order, as the company in this case was a tenant pursuant to an agreement dated 22 September 2021.
22. The Tribunal decided that it was satisfied beyond a reasonable doubt that the respondent committed an offence under section 80 of the Housing Act 2004, and that the Applicant is entitled to a rent repayment order.
23. The Tribunal considered the evidence in relation to the payment of rent. It was satisfied that the Applicant had exclusive possession of the premises, and had paid rent, and that it had entered into a tenancy agreement with the Respondent.
24. The Tribunal considered a final account which had been prepared and included within the bundle. It accepted that the sum of £5326 was the relevant rent which had been paid by the tenant seeking the rent repayment order during the period in issue.
25. The Tribunal also reminded itself of the law which had been referred to above. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.
26. The Tribunal accepted the Applicant's evidence, it noted that the applicant did not complain about the condition of the property. Notwithstanding the Respondent's failure to license the Property. It noted that there were ongoing negotiations between Ms Lai and the company for the sale of the property.
27. The panel also had regard to *Acheampong –v- Roman* [2022] UKUT 239 in which it was stated that the Tribunal should consider how serious this offence was both compared to other types of offence and what proportion of the rent is a fair reflection of the seriousness.
28. The Tribunal determined when considering all the factors and the nature and seriousness of the offence that, although it was appropriate to make an order, the appropriate and proportionate order required a deduction.
29. The Tribunal was satisfied that a rent repayment order should be made, in the sum of 40% of the rent which was paid. This reflected the fact that there was no complaint about the condition of the premises, the licence was for a selective licence for a single occupancy, and that Mr Leibowitz, although at the relevant time told the Tribunal that he occupied the premises, also had provided details of other properties which he was entitled to occupy during that period. As such the Tribunal considers that the offense would have been more egregious had the Property being occupied by Mr Leibowitz as his only home. As it was the property was let to a company.
30. The Tribunal makes an order for the sum of £2,130.40 to be paid for the period which the Tribunal finds is the appropriate order to make which marks the offence

which has been committed by the landlord in failing to apply for a mandatory licence for the periods in issue.

31. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £320.00.

Signed: Judge Daley

Dated: 14 .01.2025

Right to Appeal

32. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
33. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
34. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
35. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.